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MAR 1 1972
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SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 452. 71-452

CATHERINE J. HEALY, ET AL
Petitioners,

v.

F. DON JAMES, ET AL
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENTS

ROBERT K. KILLIAN
Atorney General

F. MICHAEL AHERN
Assistant Attorney General

30 Trinity Street
Hartford, Connecticut
Attorneys for Respondents

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BRIEF FOR RESPONDENTS

QUESTION PRESENTED

Whether the denial of official college recognition to the local chapter of Students for a Democratic Society by President James of Central Connecticut State College violated the constitutional rights of the petitioner-members of that organization?

STATEMENT OF CASE

While the respondents are in general agreement with the petitioners' statement of the case, we feel it should be clarified or corrected in several material respects.

The petitioners have neglected to mention that on May 9, 1969, the college administration, with faculty approval, had

adopted a "Statement on Rights, Freedoms and Responsibilities of Students". (Pet. for Cert., pp. 24a-32a).

The statement at page 3, Brief for Petitioners, that the "only" reason the petitioners chose to use the national name was because it brought to mind the type of organization they wished to bring across is misleading and inaccurate. The Student Affairs Committee at its October 2, 1969 meeting posed the following question, among others, to a representative of the local chapter of Students for a Democratic Society, (SDS) and received the noted reply:

> "Q. Why does the local chapter care to use the national name if it will not affiliate?
>
> A. Because the name brings to mind the type of organization we wish to bring across, that is a left-wing organization which will allow students interested in such to express themselves" (A. 94-95).

That reply did not satisfy the committee. It deferred action on the petitioners' request for recognition until the petitioners presented to the committee, among other requirements, "(d) a statement of what affiliation to the national organization is intended by the local chapter." (A. 95).

At the 13 October 1969 meeting of the Student Affairs Committee, considerable discussion again centered around the reason the petitioners chose to call themselves a local chapter of SDS and in explaining their reasons Mr. Theodore Tester, one of the petitioners, "indicated that there was no such thing as an SDS National; that individuals in the organization wanted to keep a loose arrangement and wanted to be able to pick up ideas from several of the factioned groups; [he stated] that the concept of SDS exists in the minds of those who run it. As to the question of what does a chapter mean, [the

response was] that a local chapter of SDS cannot be categorized in the usual manner of student organizations; that the local SDS represents only certain ideas of the National SDS as presently developed." (A. 98).

Thereafter the committee reviewed the statement of purpose of the organization and approved the application by a vote of 6 to 2 with the explicit qualification noted at page 4, Brief for Petitioners.

The quotation[1] from the October 30, 1969 memorandum of President James as the reason for denying recognition to the local chapter is inexcusably brief and misleading, since his reasons are material to the consideration of the question presented to this Court. Accordingly, the Respondents refer this Court to the complete text of President James' memorandum which is reproduced in the separate Appendix at pages 14-16.

The statement at page 4, Brief for Petitioners, that President James was personally involved in the incident at the Student Center is not correct. The office of Dean Judd received notice that a meeting of the local chapter of SDS was to be held on November 6, 1969 at 7:00 P.M. in the Devils' Den of the Student Center on campus to discuss President James' action. Dean Judd thereupon advised the group in writing that they could not meet in the Devils' Den or in any other college property since C.C.S.C.—SDS was not a duly recognized college organization. (A. 16-17).

The administrative hearing briefly referred to at page 4, Brief for Petitioners, was ordered by Judge Clarie to clarify the ambiguity in the petitioners' application (Pet. for Cert., p. 62a) and was to be held in accordance with certain sugges-

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[1]Brief for Petitioners, p. 4

tions which were categorized as a "blueprint" for the hearing by the Court of Appeals and enumerated as follows:

"(1) The hearing was to be held within 30 days.

(2) Reasonable notice was to be given to all parties.

(3) The hearing was to be conducted by either President James or a hearings officer duly designated by him and acting in his stead.

(4) All plaintiffs were to be afforded an opportunity to be heard.

(5) Cross-examination of witnesses was to be allowed.

(6) A record of the hearing was to be made.

(7) The hearing was to be conducted in a climate of respectful civility.

(8) Without attempting to restrict the scope of the hearing, the following lines of inquiry were suggested by Judge Clarie:

(a) The initial question might be whether or not a local unaffiliated chapter of SDS can lawfully exist without being subject to the dictates of the national organization.

(b) A copy of the organization's charter, by-laws or other similar type of document might be helpful on this point.

(c) In light of the recent fragmentation of the National SDS, it might also be relevant to know of which faction, if any, this group wishes to become a local chapter.

(d) Were it to be found to be impossible for a local chapter of SDS to exist without being affiliated with the national parent organization, could the aims and philosophy of the latter group become relevant and important?

(9) Minutes of the October 2 and October 13, 1969 meetings of the Student Affairs Committee were to be produced.

(10) Judge Clarie directed that President James, after the conclusion of the administrative hearing and upon the overall record, make his findings as to whether or not the application met the existing policy standards of the college, which would qualify the applicant club for official campus recognition.

(11) Jurisdiction was retained by the District Court for the entry of such further orders or judgments as might be necessary and appropriate." (Pet. for Cert., pp. 8a-10a).

The Court of Appeals found that Petitioners failed to comply with the suggestions of Judge Clarie in at least the following respects:

"(1) They failed to submit a copy of their charter or by-laws.

(2) They failed candidly to clarify the apparent conflict between the name of their proposed organization, 'Students for a Democratic Society of Central Connecticut State College,' and their disclaimer of being under the dictates of the national SDS organization.

(3) They failed candidly to respond to inquiries whether they would resort to violence and disruption on the CCSC campus, including interruption of classes.

(4) They failed to testify at the administrative hearing and to subject themselves to cross-examination, despite Judge Clarie's explicit direction.

(5) They failed to offer any evidence whatsoever at the administrative hearing designed to enable the college administration and Judge Clarie to resolve the issues for which the hearing was ordered; but, on the contrary, they sanctioned conduct at the hearing just the opposite of the 'climate of respectful civility' ordered by Judge Clarie." (Pet. for Cert., pp. 20a-21a).

The signed statement referred to at page 5, Brief for Petitioners, was submitted to the hearing officer by counsel for petitioners and also included a statement of change of name of petitioners' proposed organization from "local chapter of Students for a Democratic Society" to "Students for a Democratic Society of Central Connecticut State College." (Pet. for Cert., p. 12a).

The transcripts of Hearings before the Committee on Internal Security of the House of Representatives introduced into evidence by the hearing officer substantiated the fact that provisions in the SDS national constitution required adherence to national policies by local chapters and also substantiated the self-proclaimed violent and destructive aims of the SDS national leadership which had been translated into action on the campuses of other colleges. (A. 78-91, 93). The petitioners' conclusion as to the purpose of the submission of the transcripts into evidence is not proper in a statement of the case.[2] However, it is proper to note that counsel for petitioners objected to their introduction as irrelevant. (A. 66).

President James' letter of July 10, 1970 reaffirming his earlier denial of recognition to the local chapter of SDS is

[2] Id., p. 5

fully reproduced (A. 103-105) and speaks for itself. The inferences and conclusions of the petitioners relative to his reasons for denying recognition to the local chapter are not proper.[3]

As to extended argument seeking to rebut the finding of the Court of Appeals that petitioners engaged in "disruptive tactics" in footnote 5,[4] we will address ourselves to it in the section of our brief devoted to Argument.

ARGUMENT

I. RESPONDENTS ACTED WITHIN THEIR COMPREHENSIVE AUTHORITY TO PRESCRIBE AND CONTROL CONDUCT ON THE COLLEGE CAMPUS.

The respondent James as the President of Central Connecticut State College is impressed with the responsibility of administering the college under the supervision and control of the Board of Trustees for State Colleges (Conn. Gen. Stats., §§ 10-109, 10-109(b)). In the administration of the college, he is carrying out the governmental interest of the State in providing educational facilities for its young people.

"The majority of the taxpayers who established through representative government, the institution, and all the taxpayers who support this institution, have a vested interest in a peaceful campus, an academic climate of order and culture. The power of the president to oversee, to rule, is an integral part of the mechanism for providing and promoting education at State College . . ." *Hammond* v. *South Carolina State College*, 272 F. Supp. 947, 949 (D.S.C. 1967).

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[3]Id., p. 5
[4]Id., p. 6

That the courts have considered the interplay of the respective responsibilities of school officials and students in the special characteristics of the school environment is evident from the rulings in representative cases.

Courts have ruled for example:

> "We . . . hold that a college has the inherent power to promulgate rules and regulations; that it has the inherent power properly to discipline; that it has the power appropriately to protect itself and its property; that it may expect that its students adhere to generally accepted standards of conduct."
>
> *Estaban* v. *Central Missouri State College,* 415 F.2d 1077, 1089 (8th Cir. 1969).
>
> "College officials properly have wide discretion in operating the school and in determining what actions are most compatible with its educational objectives." (citing cases).
>
> *American Civil Liberties Union of Va.* v. *Radford College,* 315 F. Supp. 893, 896 (1970).

The Court in *Stacy* v. *Williams,* 306 F. Supp. 963 at 969, upheld "the premise that the facilities of state colleges and universities, dedicated as they are to the specialized function of education, may be utilized solely for that purpose" citing this Court's holding in *Adderly* v. *State of Florida,* 385 U.S. 39 (1966) as follows:

> "The state, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated."
>
> "[This] Court has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school authorities, consistent with fundamental con-

stitutional safeguards, to prescribe and control conduct in the schools."

Tinker v. *Des Moines Ind. Comm. School Dist.*, 393 U.S. 503, 507 (1969).

On the other side of the coin, the court in *Estaban*, supra, at p. 1089, delineated the responsibilities of the college students in part as follows:

"College attendance, whether it be a right or a privilege, very definitely entails responsibility. . . . The mass denial of rights of others is irresponsible and childish. So is the defiance of proper college administration. . . ."

To the same effect, the Court in *Stacy*, supra, held at page 969 that "college students can have no valid objection to proper rules governing their conduct as members of the academic community" citing and endorsing the statement made by the United States District Judges for the Western District of Missouri, sitting en banc, on the subject of *"Obligations of a Student" in General Order on Judicial Standards of Procedure and Substance in Review of Student Discipline in Tax Supported Institutions of Higher Education"*, 45 F.R.D. 133 at 141, in part, as follows:

"The voluntary attendance of a student in such institutions (tax supported educational institutions of higher learning) is a voluntary entrance into the academic community. By such voluntary entrance, the student voluntarily assumes obligations of performance and behavior reasonably imposed by the institution of choice relevant to its lawful missions, processes and functions. *These obligations are generally much higher than those imposed on all citizens by the civil and criminal law.* (emphasis supplied).

Applying the above expressions of judicial insight to the record in this case, it is conclusively evident that President James properly denied recognition to the local chapter of Students for a Democratic Society.

It is certainly within the actual knowledge of each member of this Court that during the academic years 1968-69 and 1969-70 there were numerous violent demonstrations on college campuses. The Circuit Court referred to an *Address* by Honorable Jerris Leonard, Assistant Attorney General of the United States, at Conference of Association of Governing Boards, St. Louis, Missouri, on October 6, 1970 citing the startling statistics for such periods. (Pet. for Cert., p. 22a, note 39).

The involvement of the national SDS and its local chapters in the campus disruptions is extensively chronicled in the amicus brief of Americans for Effective Law Enforcement, Inc., filed in this case.

The violent participation of SDS chapters in college disturbances led Judge Tenney of the District Court for the Southern District of New York to comment in Cole v. Trustees of Columbia, 300 F. Supp. 1026 at 1028:

> "In furtherance of the Society's objectives, its *chapters and members* have often been the focal point of the expression of opposition to certain foreign and domestic policies of the United States Government. In this respect and in accordance with *its aims and purposes*, the organization has both directly and indirectly participated in campus disorders which have resulted from the spread of student unrest." (Emphasis added).

It was in this violent and disruptive climate that the petitioners met in September, 1969 and decided to form a

local chapter of Students for a Democratic Society on the campus of Central Connecticut State College and seek official recognition from the college administration.

If, as the petitioners claim, they wished to form "a left-wing organization which will allow students interested in such to express themselves" (A. 95) they could have chosen any one of several names which would have identified them with that philosophy, i.e., The Progressives, The Left-Wing, etc. However, they opted to choose the national SDS name "because the name brings to mind the type of organization we wish to bring across." (A. 94). And they were determined in their pursuit of official recognition for their local chapter, filing an application pursuant to the provisions of Section V of a document entitled "Statement on Rights, Freedoms and Responsibilities of Students" which had been adopted by the administration on May 9, 1969 with the approval of the faculty. (Pet. for Cert., pp. 24a-32a).

In their application for recognition of the local chapter of SDS, the petitioners stated, inter alia, that "ideas without parallel in deeds are empty and ephemeral" and that "SDS would provide *an agency* for integrating thought with action so as to bring about constructive changes in the university, in American life and the world." (A. 92) (emphasis in original).

In considering the application, the Student Affairs Committee at its October 2, 1969 meeting asked Miss Catherine Healy, one of the petitioners, several questions, among them the following:

"(3) Q. How would you respond to issues of violence as other SDS chapters have?

A. Our action would have to be dependent upon each issue.

(4) Q. Would you use any means possible?

A. No, I can't say that; would not know until we know what the issues are.

(7) Q. Could you envision the SDS interrupting a class?

A. Impossible for me to say." (A. 94-95).

At the request of the Committee the petitioners offered a statement that the local chapter ". . . [are] not under the dictates of any national organization." At the October 13, 1969 meeting of the Committee, responding to queries of Committee members, the minutes show petitioner Theodore Tester represented that "there was no such thing as a SDS National", that the petitioners "wanted to be able to pick ideas from several of the factioned groups", and that "the local SDS represents only certain ideas of the national SDS as presently developed." Thereafter, the Committee, on a 6 to 2 vote conditionally approved the application.

On October 30, 1969, President James denied petitioners' request in the following language:

"I am disapproving recognition of a local chapter of Students for a Democratic Society.

Though I have full appreciation for the action of the Student Affairs Committee and the reasons stated in their minutes for the majority vote recommending approval of a local chapter of Students for a Democratic Society, it is my judgment that the statement of purpose to form a local chapter of Students for a Democratic Society carries full and unmistakable adherence to at least some of the major tenets of the national organization, loose and divided though that organization may be. The published aims and philosophy of the Students

for a Democratic Society, which include disruption and violence, are contrary to the approved policy (by faculty, students, and administration) of Central Connecticut State College which states:

> 'Students do not have the right to invade the privacy of others, to damage the property of others, to disrupt the regular and essential operation of the college, or to interfere with the rights of others.'

The further statement on the request for recognition that 'CCSC Students for a Democratic Society are not under the dictates of any National organization' in no way clarifies why if a group intends to follow the established policy of the College, they wish to become a local chapter of an organization which openly repudiates such a policy.

Freedom of speech, academic freedom on the campus, the freedom of establishing an open forum for the exchange of ideas, the freedoms outlined in the Statement on Rights, Freedoms and Responsibilities of Students that "college students and student organizations shall have the right to examine and discuss all questions of interest to them, to express opinion publicly and privately, and to support causes by orderly means. They may organize public demonstrations and protest gatherings and utilize the right of petition" — these are all precious freedoms that we cherish and are freedoms on which we stand. To approve any organization or individual who joins with an organization which openly repudiates those principles is contrary to those freedoms and to the approved 'Statement on the Rights, Freedoms, and Responsibilities of Students' at Central."

At the administrative hearing held by college officials pursuant to an order of Judge Clarie of the United States

District Court Miss Healy, although accompanied by counsel, sat silently by when her previous testimony was received in evidence. (Pet. for Cert., p. 15a). Nor did the petitioners constructively attempt to clarify the ambiguity on its application for which purpose the hearing was ordered.

It is significant Miss Healy did not testify that she was opposed to the use of violence and disruption. It is particularly significant in the light of the written statement offered into evidence at the hearing to the effect that the local chapter would not be affiliated with the "structure" of the national SDS but which carefully avoided disassociating the local chapter from the aims and purposes of the national SDS.

At the administrative hearing, the hearing officer introduced exhibits which effectively rebutted petitioners' statements that they were free from the dictates and influence of the national organization, e.g., Article III, Sec. 3 of the constitution of the National Students for a Democratic Society provides, "Chapters are expected to operate within the broad terms of policies set by the national convention and the national council". (Hearing Officer Ex. G, p. 2107, A. 79).

Also, the reproductions of local and national membership cards clearly showed a continuing relationship between local and national offices and also indicates joint membership record-keeping systems. (H. O. Ex. G, pp. 2170 and 2171, A. 80-84). [In the printing of the separate appendix, language overprinted on the membership cards which make up this exhibit was deleted.

1. The overprint deleted on the membership cards reproduced at A. 80-81 was as follows: "(For Chapter Records)".

2. The overprint deleted on the membership card reproduced at A. 83 was as follows: "(For National Office Records)".

3. The overprint deleted on the membership card reproduced at A. 84 was as follows: "(For Chapter Records)".

Also on the national membership card reproduced at A. 83, the words "Local Dues" and "sum" are incorrect. In lieu thereof the words "national dues $5" should be inserted as well as two boxes to be checked to indicate whether the applicant is a "Renewal" or a "New Member".

Additionally, the documents reproduced at A. 82-84 comprise one page of the exhibit, i.e., p. 2171. They have been incorrectly separated in the Appendix.

In view of the above-noted errors, we refer the Court to the original exhibits so that their real significance can be appreciated.]

We submit that, in the light of the above documented evidence, respondent James understandably did not give credence to the statement of the petitioners that they would not be "under the dictates of any national organization". This decision was not arbitrary or capricious but was reasonable in view of the fact that the plaintiffs did not submit either a local charter or the charter of the National Students for a Democratic Society to substantiate such independent status.

The final decision of defendant James made specific reference to the disruptive activities of Students for a Democratic Society in Columbus, Ohio, schools (H. O. Ex. G, p. 2117, A. 85); statements calling for a "class war in the streets," (H. O. Ex. G, p. 2125, A. 87); a quote of Mark Rudd, "we will have to destroy at times, even violently, in

order to end your power and your system", (H. O. Ex. H, p. 133, A. 90); a Greg Calvert saying, "to build a guerilla force in an urban environment; we are actively organizing sedition." (H. O. Ex. H, p. 133, A. 90); and a note signed by Mike Spiegel indicating a National Students for a Democratic Society policy of requiring certain things of local chapters. (H. O. Ex. N, p. 713, A. 93).

"The *reasonableness* of the inquiries made by President James in a nationwide atmosphere of ticking time bombs can hardly be open to serious question. See *Schenk* v. *United States*, 249 U.S. 47, 52 (1919)." (emphasis in original)

Although the representatives of the local chapter of SDS disavowed any affiliation with the structure of the national organization, they at no time decried its history and philosophy of violence and disruption. Their responses to questions as to their advocacy of violence and disruption were vague and evasive. When confronted with the constitution of the national SDS which one of its number had denied existed, showing control over local chapters, they refused to comment and steadfastly refrained from any statement decrying violence and disruption as a means of advancing the aims and policies of the national SDS or the local chapter.

While the October 30, 1969 memorandum of President James specified that the aims and philosophy of the national SDS included disruption and violence and were contrary to the approved policy of CCSC, the petitioners at no time volunteered to specify which aims and philosophy of the national SDS they adhered to and which they disdained.

The fragmentation of the national SDS into several splinter groups further confused the picture as to which faction the petitioners meant to become affiliated and what the aims and philosophy of that faction happened to be.

It is indeed strange that even though the national SDS was in the middle of an ideological struggle, the petitioners persistently clung to its name.

Under the circumstances, we submit, it was not only reasonable but necessary for President James to question the petitioners as to their affiliation in order to meet his obligation as head of the college. We further submit that when a reasonable doubt was raised as to the ability of the local chapter to operate independently of the national SDS, it was incumbent upon the petitioners to attempt to resolve that doubt. This they made no effort to do. The petitioners failed totally to measure up to the "higher responsibilities" expected of them as student members of the college community.

President James denied official campus recognition to the local chapter of Students for a Democratic Society since, in his judgment, the petitioners had not sustained the burden of showing that their identification with the national corporate name of Students for a Democratic Society would permit them to function with absolute freedom and since the evidence clearly disclosed that the policy and purposes of the national organization advocate the violent overthrow of existing government institutions through the medium of disruptive anarchistic force. (A. 78-91, 93) His action was reasonable and proper under the responsibility and wide discretion vested in him in matters affecting the college. *Brooks* v. *School District*, 267 F.2d 733, 739 (8th Cir.) cert. denied, 361 U.S. 894 (1959).

As the Court held in *Estaban*, supra, p. 1050, "[A]fter all, the test, we feel is that of reasonableness" citing *Dickey* v. *Alabama State Board of Education*, 273 F. Supp. 613, 618.

"It is not required that the college authorities delay action against the inciters until after the riot has started and buildings have been taken over and damaged. *The col-*

lege authorities have the right to nip such action in the bud and prevent it in its inception." Norton v. *Discipline Committee of East Tennessee University,* 419 F.2d 195, 199 (1969). (emphasis added)

"Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values. On the other hand, '(t)he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools,' Shelton v. Tucker, 364 U.S. 479, 487." *Epperson* v. *Arkansas,* 393 U.S. 97, 104 (1968).

We respectfully submit that the action of President James was within his comprehensive authority to prescribe and control conduct on the campus pursuant to constitutional safeguards and should not be disturbed by this Court.

II. THE CONSTITUTIONAL RIGHTS OF THE PETITIONERS HAVE NOT BEEN VIOLATED.

A. The rights of each Petitioner to speak and to associate have not been proscribed.

The respondents recognize that "for good or for ill, the Constitution has come to the campus." Wright, *The Constitution on the Campus,* 22 Vand. L. Rev. 1027, 1033 (1969).

The First Amendment rights of freedom of speech and freedom of assembly are rights secured to persons by the due process clause. *Hague* v. *Comm. for Industrial Organization,* 307 U.S. 496 at 527.

We submit there is nothing in the record of this case to substantiate the claim of Petitioners that either President James or the other named respondents have ever interfered

with or proscribed the petitioners' *individual rights* to voice any political or other opinions or to associate with any persons. Nor have they interfered with or proscribed the organization by the petitioners of a local chapter of Students for a Democratic Society or its meetings anywhere except on the campus of Central Connecticut State College.

The petitioners cited the incident in the Devils' Den of the Student Center on the CCSC campus as proving a prior restraint on their right of association. Their characterization of that incident is not correct, since it was preceded by an announcement of the meeting of the local chapter of SDS which was received in the office of the acting dean of Student Affairs. The memorandum denying the use of college property specifically refers to the "meeting of the CCSC-SDS on Thursday, November 6 at 7:00 P.M. at the Devils' Den." (A. 16). The individuals were never advised that they could not meet together to discuss political beliefs or any other matter on campus — the restriction applied only to meetings of CCSC-SDS.

Accordingly, Judge Clarie appropriately found that the administrative decision of President James, "is not in the same category as a criminal prosecution involving the teaching or espousing of revolution; nor does it attempt civilly to enjoin those utterances which might be considered as an imminent threat to order. . . . All that is denied is the college administration's stamp of approval on the organization as an officially accepted and recognized campus club with its attendant privileges."

Assuming for the sake of argument this Court is persuaded, as the lower courts were not, by petitioners' argument that the decision of President James interfered with their First Amendment rights of free speech and free association, we submit that the alleged interference was permissible under the rationale of this Court in *Tinker*, supra. Consider-

ing the background of violence on college campuses in the Fall of 1969 and the documented participation of SDS in the disruptions; there was clearly more than an "undifferentiated fear or apprehension of disturbance" present in the instant case which could reasonably have led President James to anticipate that the activities of the local chapter of SDS "would substantially interfere with the work of the school or impinge upon the rights of other students." 393 U.S. at p. 509.

B. Petitioners were afforded Due Process.

In his decision of April 24, 1970, District Court Judge Clarie ordered the college to hold an administrative hearing to clarify the ambiguity which he found to exist on the face of the petitioners' application. The court-structured hearing was comprehensive and his suggestions were enumerated by the Court of Appeals as noted at pages 3-5, supra.

The Court of Appeals found that the petitioners, who were at all times represented by legal counsel, "failed to avail themselves of the procedural due process accorded them." (Pet. for Cert., p. 20a).

The petitioners, all college students whose maturity has been recognized by virtue of the Twenty-sixth Amendment to the Constitution of the United States, have forcefully reminded this Court and the respondents that Mr. Chief Justice Burger, writing for the plurality in *Tilton* v. *Richardson*, 403 U.S. 672 (1971) found that "college students are less impressionable and less susceptible to religious indoctrination" than elementary and secondary school students.

In spite of their maturity and legal representation, the petitioners opted to refuse to comply with the suggestions of Judge Clarie in numerous respects as the Court of Appeals found and which are listed at pages 5, 6, supra.

Their disdain for the college administration and the courts is clearly shown by their refusal to constructively participate in the court-ordered administrative hearing to afford them due process. In fact, only two of their number saw fit to attend the hearing held on May 19, 1970, and Miss Healy was the lone petitioner in attendance at the continued hearing on May 25, 1970.

The Court of Appeals also found that legal counsel for the petitioners engaged in "disruptive tactics" during the hearing. (Pet. for Cert., p. 10a).

At the court-ordered hearing opened, counsel for the petitioners objected to the hearing being tape recorded. This obvious harrassment of the hearing officer and low-keyed disruption of the hearing is attributed to the fact that he was concerned that portions of the testimony might be missed. (Brief for Petitioners, footnote 5, p. 6). However, the record completely refutes that assertion. Counsel stated that he would "make all the remarks that have to be made." (A. 30). When asked if he had any witnesses present, his reply was a flip, "Well, whoever is here is here." (A. 30). The record clearly shows that not only had counsel not planned to present any witnesses but also that his insistence on calling President James as a witness was a spur of the moment idea, the only motive for which was harrassment. The statement read by counsel into the record was entered as an exhibit so that its contents were readily available. (A. 36). Under the circumstances, it is inconceivable that, as the hearing commenced, counsel was honestly concerned with preserving "testimony".

Counsel next objected to the fact that President James was not presiding at the hearing so that his evaluation of the "evidence" would not be firsthand but would be from a written record. (A. 34). When he was reminded that Judge Clarie had specified President James could designate a hearing officer to conduct the hearing and Dean Judd had been

so designated, his reply was, "I take the position that the hearing is not properly conducted notwithstanding Judge Clarie's statement." (A. 34). However, the only "evidence" which he contemplated offering at the commencement of the hearing was the written statement noted above, so the petitioners have advanced a new reason for his objection — a legitimate desire that respondent James hear their "argument" personally. (Brief for Petitioners, footnote 5, p. 7).

Counsel's displeasure with the conduct of the hearing resulted in several outbursts which the Court of Appeals found to be out of place in the "climate of respectful civility" ordered by the District Court. These outbursts are attributed by petitioners to counsel's exasperation which it is claimed was precipitated by the hearing officer. (Brief for Petitioners, footnote 5, p. 7). This view can hardly be given credence in view of the fact that the intransigence of counsel was the only area of agreement in the decision of the appellate jurists. The dissenting judge flatly indicted counsel, stating, "It is true, as the majority makes plain, that the applicants' counsel did try the patience of Dean Judd as hearing officer, . . ." (A. 38a).

III. THIS COURT HAS NEVER CONSIDERED THE PRECISE ISSUE IN THIS CASE.

This is a case of first impression with this Court.

No student group is entitled, per se, to official college recognition.

The extensive research of the dissenting Judge below succeeded in uncovering only one unreported case in which a state trial court upheld the denial of official recognition of an SDS chapter. *Saxton* v. *Bd. of Regents*, No. 123-165, Cir. Ct. Dane County, Wisc., May 21, 1968.

In the interim, since the decision of the Circuit Court, two federal courts have considered the denial of recognition to student organizations. In each case, the court ruled that the student organization was entitled to official campus recognition and distinguished each case from the present case which was cited in the decisions.

In *ACLU of Va.* v. *Radford College,* supra, the court held the petitioners were entitled to recognition as a campus chapter of ACLU. In considering the issue, the court very properly considered the background of the national organization with which the local chapter was affiliated noting at p. 899, "The ACLU is a well (but in many places unfavorably) known national organization with countless chapters, many of which are on-campus student groups." In distinguishing that case from the instant case the court said at p. 897, "The *Healy* case is instructive but it is not determinative of the controversy at hand. There is no allegation in this case that the ACLU is an organization which seeks to use violent or unlawful means to accomplish its goals."

In *University of Southern Mississippi Chapter of the Mississippi Civil Liberties Union* v. *Univ. of S. Mississippi,* _____ F.2d _____ (5th Cir. 1971), the court ruled that the local CLU chapter was entitled to college recognition. Both the district and appellate courts significantly considered the history of the state and national parent organizations stating in footnote 2, "The district court found: 'Of the reasons offered for the denial of the charter, the Court does not find sufficient merit in any to justify sustaining the University's position except for the barely tenable reasons based on the expressed threats of litigation by the local chapter and this history of the litigation waged by the state and national organizations.' " In distinguishing that case from the instant case the court noted, ". . . certain members of SDS have advocated disruption as a means of achieving its

goals. Second, in *Healy*, SDS actually demonstrated a refusal to abide by university procedures for dispute resolution when it behaved defiantly during a court-structured hearing to determine its status. The denial in *Healy* was therefore based at least in part upon some evidence of actual misbehavior. . . ."

The above two cases affirmatively support the respondents' position that designating itself as a local chapter of SDS very definitely indicated affiliation with the national organization warranting the inquiries of President James as to the extent of such affiliation. They also support the decision of President James in denying recognition of the local chapter of SDS. However, whether the cases were properly decided on First Amendment grounds is questionable, since the ACLU does not claim to be a political organization.

In *Tinker*, supra, on which the petitioners place great reliance, this Court held that "First Amendment rights, applied in the special characteristics of the school environment are available to . . . students." It seems incongruous to us that the petitioners cite *Tinker* as supporting their First Amendment position, yet they completely ignore the fact that this Court specifically singled out educational institutions as having "special characteristics" which distinguish their functions from the functions of municipalities. We submit the argument advanced by the petitioners that educational institutions should be accorded the same standing as a municipality must fall before the above rationale of this Court.

In view of the special characteristics of the school environment, this Court, in *Tinker*, recognized the need of the school administrators to retain their comprehensive authority to control conduct in the schools and fashioned the test on whether "*. . . the school authorities had reason to anticipate that the wearing of armbands would substantially interfere*

with the work of the school or impinge upon the rights of other students." 393 U.S. at p. 509. (emphasis supplied).

The above-quoted language reserves to the administrator the right to prevent what the Court labeled in *Schenk,* supra, "serious substantive evil" as long as he does not act unreasonably. This reservation of authority to prevent disruption and violence on campus rather than waiting until it occurs and then punishing the wrongdoers would appear to be administratively sound.

It is also supported by this Court which held in *Speiser* v. *Randall,* 357 U.S. 513 at 527, "[W]here the attempt is to protect against an evil within the sphere of state concern, the rule is that *a proscription which only tangentially touches a protected freedom will be sustained.*" (emphasis added)

The focus of all the cases relied upon by petitioners in which the framework of reference is an educational environment is concentrated on the statement of the court in *Estaban,* supra, at p. 1090, "After all, the test, we feel, is that of reasonableness."

Certainly the respondents have satisfied the test of reasonableness and respectfully request the Court to so find.

The petitioners have voiced considerable concern over the fact that the special political perspective of SDS is now absent from the campus of CCSC. The petitioners have only themselves to blame for this state of affairs since it was their intransigence which deprived their organization of official recognition. The rest of us can breathe a little easier in the knowledge that an organization, the members of which have defiantly refused to renounce violence and disruption, has been denied the privileged position of acting within the college community as an officially approved campus organiza-

tion because President James measured up to his responsibilities.

The petitioners have advanced the proposition that this case gives the Court an opportunity to implant the First Amendment firmly on the college campus. We trust the Court will not be misled by the petitioners' subtle rhetoric. To adopt their theory of the case would effectively strip the college administrators of any authority to question whether a particular group has aims and policies which are not compatible with the educational objectives of the college.

As the district Court said in *Zemel* v. *Rusk*, 228 F. Supp. 65, 71 (1964), "Personal vigilance to safeguard freedom should never be permitted to become a sword used for the destruction of the edifice it protests it is protecting."

CONCLUSION

For any or all of the reasons set forth above, it is respectfully submitted that the decision of the lower Court should be affirmed.

Respectfully submitted,

ROBERT K. KILLIAN
Attorney General

F. MICHAEL AHERN
Assistant Attorney General

Attorneys for Respondents
30 Trinity Street
Hartford, Connecticut

February 25, 1972